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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,614	10/17/2003	Kelcy L. Warren	ETG:1003	2439
34725	7590	12/10/2007		
CHALKER FLORES, LLP 2711 LBJ FRWY Suite 1036 DALLAS, TX 75234			EXAMINER BORISSOV, IGOR N	
			ART UNIT	PAPER NUMBER
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			12/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/688,614

**Applicant(s)**

WARREN ET AL.

**Examiner**

Igor N. Borissov

**Art Unit**

3628

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08/09/2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-94 is/are pending in the application.
- 4a) Of the above claim(s) 20-29, 50-65 and 85-94 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 30-49, 66-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's election with traverse of claims 1-19, 30-49 and 66-84 in the reply filed on 08/09/2007 is acknowledged. The traversal is on the ground(s) that the examiner merely states a conclusion that the inventions are independent and distinct species and does not satisfy the requirements of MPEP § 808.

This is not found persuasive because the species are independent or distinct, and Species 2, drawn to method, system and computer-readable medium for controlling operation of electrical power generation or distribution system, classified in class 700, subclass 286, has utility separate from that of Species 1 drawn to method, system and computer-readable medium for energy trading, classified in class 705, subclass 37.

Because these species are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, or patentability requirements, restriction for examination purposes as indicated is proper.

Therefore, the requirement is still deemed proper and is therefore made FINAL.

Accordingly, Claims 20-29, 50-65 and 85-94 are withdrawn from consideration.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 2, 5, 6, 9-12, 15, 30, 31, 34-36, 39-42, 45, 66, 67, 70, 71, 74-77 and 80 are rejected under 35 U.S.C. 102(e) as being anticipated by Mistr, Jr. (US 6,153,943).**

Mistr, Jr. teaches a method, system and a computer-readable medium having instructions embedded therein for causing a computer to implement said method for selecting a power source to a device, comprising:

Claims 1, 30 and 66,

(a) analyzing market and operational data related to the two or more available power sources, and the device or delivery point (C. 13, L. 6-11, 21, 31-32; C. 17, L. 12-14);

(b) selecting the power source for the device or delivery point from the two or more available power sources based on a set of financial parameters (C. 13, L. 37-40);

(c) sending one or more signals to switch the device or delivery point to the selected power source whenever the device or delivery point is not already connected to the selected power source (operating system by a computer in an automatic mode indicates "signal" feature; C. 13, L. 37-40).

Claims 2, 31 and 67. Sending one or more signals to switch the device or delivery point to the selected power source whenever the device or delivery point is not already connected to the selected power source comprises the steps of: whenever the device or delivery point is not already connected to the selected power source, determining whether it is profitable to switch the device or delivery point to the selected power source (C. 13, L. 37-44);

sending one or more signals to switch the device or delivery point to the selected power source whenever it is profitable to switch the device or delivery point to the selected power source (operating system by a computer in an automatic mode indicates "signal" feature; C. 13, L. 37-40).

Claims 5, 18, 19, 34-36 and 70. Receiving market and operational data related to the two or more available power sources, and the device or delivery point (C. 13, L. 6-11, 21, 31-32; C. 17, L. 12-14).

Claims 6 and 71. Repeating steps (a), (b) and (c) (monitoring said market and operational data in real time indicates "repeating" feature; C. 13, L. 31-37).

Claims 9-12, 39-42, 74-77. Said method and system, wherein the market and operational data is selected from the group consisting of historical operating data, current operating data, contract data, market data and financial data.

Claims 15, 45, 80. Said method and system, wherein the one or more available power sources is an electricity source selected from the group consisting of one or more electrical network connections, one or more combustion turbine generators, one or more steam turbine generators, one or more batteries, one or more fuel cells, one or more solar cells, one or more wind generators, one or more biomass generators and one or more hydroelectric generators.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 3, 4, 13, 32, 33, 43, 68, 69 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mistr, Jr. in view of Aasen et al. (US 4,802,100).**

Claims 3, 32 and 68. Mistr, Jr. teaches all the limitations of claim 3, including sending one or more signals to switch the device or delivery point to the selected power source, except specifically teaching: determining whether a user has overridden switching the device or delivery point to the selected power source; and that said sending one or more signals to switch the device or delivery point to the selected power

source is conducted whenever the user has not overridden switching the device or delivery point to the selected power source.

Aasen et al. teaches a method and system for selecting a power source to a device, comprising: (a) analyzing market and operational data related to the two or more available power sources, and the device or delivery point; (b) selecting the power source for the device or delivery point from the two or more available power sources based on a set of financial parameters; and (c) sending one or more signals to switch the device or delivery point to the selected power source whenever the device or delivery point is not already connected to the selected power source, wherein system control can be implemented via a manual mode, thereby suggesting "overridden" feature (C. 6, L. 27-35; C. 10, L. 55-59; C. 15, L. 58 - C. 16, L. 22).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mistr, Jr. to include determining whether a user has overridden switching the device or delivery point to the selected power source, as suggested in Aasen et al., because it would advantageously allow to reprogram the system for business benefit. Furthermore, in this case, each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. See *Sakraida*, 425 U.S. at 282, 189 USPQ at 453. Therefore, Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (KSR, 82 USPQ2d at 1396) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex arte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

Claims 4, 33 and 69. Aasen et al. teaches updating a display (Fig. 3).

Claims 13, 43 and 78. Aasen et al. teaches that the one or more signals are manually sent or implemented.

**Claims 7, 8, 14, 16-19, 37, 38, 44, 46- 49, 72, 73, 79, and 81-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mistr, Jr.**

Claims 7, 8, 37, 38, 72 and 73. Mistr, Jr. teaches repeating steps (a), (b) and (c) (monitoring and calculating in real time), thereby suggesting that said repeating of said steps is conducted periodically. The motivation would be to employ the low cost slow processors and network connection.

Claims 14, 44 and 79. The method as recited in claim 1, wherein the delivery point is an electrical connection to an electricity customer or a redelivery point to an electrical network (paying for electricity suggests customer relationship).

Claims 16, 46 and 81. Mistr, Jr. suggests that the one or more available power sources is a mechanical source selected from the group consisting of one or more engines, one or more motors, one or more motor/generators and one or more turbines.

Claims 17, 47 and 82. Mistr, Jr. suggests that the device is selected from the group consisting of a compressor and a pump.

Claims 18, 19, 48, 49, 83 and 84. Mistr, Jr. suggests multi-source systems.

***Conclusion***

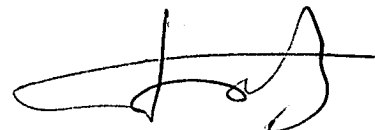
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, see form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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11/29/2007



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PRIMARY EXAMINER